

FILE COPY

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION	:	
FOR A LICENSE AS A REAL ESTATE	:	FINAL DECISION
BROKER OF	:	AND ORDER
	:	LS9301131REB
IRENE J. BENZ,	:	
APPLICANT.	:	

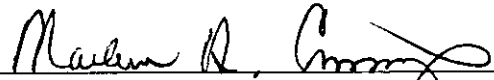
The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 22nd day of April, 1993.



Marlene A. Cummings, Secretary

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF	:	
THE APPLICATION FOR A LICENSE	:	PROPOSED DECISION
AS A REAL ESTATE BROKER OF	:	Case No. LS-9301131-REB
IRENE J. BENZ,	:	(DOE case number 93 REB 001)
APPLICANT.	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Irene J. Benz
W130 N6106 River Drive
Menomonee Falls, WI 53051

Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

PROCEDURAL HISTORY

A. On November 18, 1992 the applicant, Irene J. Benz, filed an application for a real estate broker's license. The Department of Regulation and Licensing denied Ms. Benz's application on December 2, 1992 based on her failing to satisfy the education requirements for a broker's license and her failing to either pass the salesperson's test or hold a salesperson's license.

B. On December 9, 1992 Ms. Benz sent a letter to the Department requesting a reconsideration of its denial of her application. The Department wrote to Ms. Benz on December 14, 1992 affirming its decision.

C. On December 19, 1992 Ms. Benz filed a request for a hearing on the denial. A denial proceeding ("hearing") was scheduled for February 12, 1993. Notice of Hearing was prepared by the Division of Enforcement and sent by certified mail to Ms. Benz on January 13, 1993. As stated in the notice,

"The issues raised for consideration at the hearing on the denial of your application for licensure are:

1. Whether applicant Benz has satisfied the educational requirements for a license as a real estate broker?

2. Whether applicant has passed the necessary salesperson and broker exams?"

Ms. Benz received the notice on January 19, 1993.

D. All time limits and notice and service requirements having been met, the denial proceeding was held as scheduled on February 12, 1993. Ms. Benz appeared in person, without an attorney. The Department was represented by Attorney Charles Howden of the Department's Division of Enforcement. The hearing was recorded, and a transcript of the hearing was prepared and delivered on April 1, 1993. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

APPLICABLE STATUTES AND RULES

Sec. 452.09(3)(d), Wis. Stats.:

The department may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination.

Sec. RL 12.015(2), Wis. Admin. Code:

BROKER'S ELIGIBILITY REQUIREMENT. An applicant for examination to obtain an original real estate broker's license shall complete the education requirements specified in s. RL 25.02(1) and shall either hold a Wisconsin real estate salesperson's license or shall have passed the salesperson's examination pursuant to s. RL 12.02.

FINDINGS OF FACT

1. On June 29, 1992, the applicant, Irene J. Benz, filed a registration form with PSI Real Estate Licensing Examination Services to take the test for real estate broker administered on July 18, 1992. In the registration form Ms. Benz checked item 12, which states "I certify that I will have satisfied the education and other eligibility requirements (outlined in the 'Licensing Qualifications' section of the Licensing Information Bulletin, page 2) prior to the date of examination."

2. The section on licensing qualifications in the Licensing Information Bulletin which was current on June 29, 1992 states:

Applicants for Broker may qualify for the broker's examination and a broker's license by satisfying one of the following combinations of requirements:

- 1) Be licensed as a Wisconsin salesperson and:
 - a) either show proof of completion of thirty-six (36) classroom hours of approved programs in business management;
 - b) or show proof of having obtained twenty (20) semester-hour credits in real estate or real estate related law courses at an accredited institution of higher education; **(NOTE: applicants are advised to confer with the Department before applying for the licensing examination about whether credit courses taken by them are acceptable or not. In any case, do not send transcripts or education certificates to PSI. They should be submitted to the Department with the application for licensure.)**
 - c) or show proof of being licensed to practice law in Wisconsin. **(NOTE: Send proof to the Department, not PSI.)**
- 2) Have passed the Wisconsin salesperson's examination and:
 - a) either show proof of completion of thirty-six (36) classroom hours of approved programs in business management;
 - b) or show proof of having obtained twenty (20) semester-hour credits in real estate or real estate related law courses at an accredited institution of higher education; **(NOTE: applicants are advised to confer with the Department before applying for the licensing examination about whether credit courses taken by them are acceptable or not. In any case, do not send transcripts or education certificates to PSI. They should be submitted to the Department with the application for licensure.)**
 - c) or show proof of being licensed to practice law in Wisconsin. **(NOTE: Send proof to the Department, not PSI.)**

2. Ms. Benz took the broker's exam on July 18, 1992 and received a passing score of 83 correct out of 100. The test report from PSI Real Estate Licensing Examination Services stated "Congratulations on passing the Wisconsin Real Estate Broker Examination. Save this notice to submit with your license application (attached)."

3. On November 18, 1992 Ms. Benz applied to the Department of Regulation and Licensing for a license as a real estate broker. Section C of the application form, for broker applicants, states in part:

Education Requirements. Enclose one of the following:

1. A certificate issued by an approved school certifying completion of the 36-hour educational program in business management. ...

2. A transcript showing 20 academic credits completed at an institution of higher learning in real estate or real estate-related law.
3. A photocopy of a certificate of good standing in the Wisconsin State Bar.

4. With her application, Ms. Benz provided a transcript from Milwaukee Area Technical College (MATC) showing that she has completed 12 credits of real estate courses. The transcript does not show that she has completed 36 classroom hours of business management, nor that she has completed 20 hours of real estate-related law.

5. Ms. Benz is not a member of the State Bar of Wisconsin.

6 Section C of the application form prepared by Ms. Benz also directs applicants to check one of the following:

- ☐ I presently hold a salesperson's license in Wisconsin. I have enclosed a score report showing I have passed the Wisconsin broker's exam
- ☐ I do not presently hold a salesperson's license in Wisconsin. I have enclosed score reports showing I have passed the Wisconsin salesperson's exam and the Wisconsin broker's exam

Ms. Benz checked the second option above and crossed out the words "the Wisconsin salesperson's exam and", so that the passage in her application read "I do not presently hold a salesperson's license in Wisconsin. I have enclosed score reports showing I have passed the Wisconsin broker's exam"

7. One of the classes Ms. Benz took at MATC, in the fall semester of 1991, was Principles of Real Estate. The instructor, Thomas Kettler, informed the class that a person could be licensed as a real estate broker after taking Principles of Real Estate and Real Estate Law and passing the broker's examination, and that the person would have to work for a broker for a year before going out on his or her own.

8. In addition to her coursework at MATC, Ms. Benz completed courses in Business Law, Marketing Principles, and Office Management at Waukesha County Technical College, and she has satisfied the education requirement of twenty hours of real estate-related law for a real estate broker. Ms. Benz did not submit a transcript of this coursework with her original application.

9. The examination for real estate salesperson is different in scope as well as in difficulty from the examination for real estate broker.

10. Ms. Benz has not passed the real estate salesperson's examination and she does not hold a real estate salesperson's license.

CONCLUSIONS OF LAW

I. The Department of Regulation and Licensing has personal jurisdiction over the applicant, Irene Benz, based on her having applied for a credential issued and controlled by the Department, and her having received timely notice of the hearing.

II. No statement made by Ms. Benz's instructor in Principles of Real Estate can amend, alter, waive or overrule the legal requirements for licensure as a real estate broker.

III. Ms. Benz has not met the statutory requirements for licensure as a real estate broker, and she failed to show that the Department of Regulation and Licensing's denial of her application for a real estate broker's license was an abuse of discretion or otherwise reversible.

ORDER

THEREFORE, IT IS ORDERED that the Department of Regulation and Licensing's decision is affirmed, and Irene J. Benz's application for a real estate broker's license in the state of Wisconsin is denied.

OPINION

Despite all the issues raised and discussed in the hearing in this matter, the controlling fact here is that Ms. Benz cannot be granted a broker's license. The Department has no authority to do so, and no discretion to depart from the clear and unambiguous language of the statute¹, even if Ms. Benz was given inaccurate or misleading information by an instructor. The following discussion attempts to address and resolve the other issues that were raised, but neither I nor the Department can change the bottom line.

The Department's denial originally had two bases: (1) that Ms. Benz had not satisfied the education requirement to be licensed as a broker, and (2) that Ms. Benz did not hold a salesperson's license and had not passed the salesperson's exam. Based on the information presented by Ms. Benz in her application, the denial was appropriate on both bases. Her

¹Sec. 452.09(3)(d), Wis. Stats. states "The department may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination."

transcript showed only 12 hours of real estate-related coursework, and she had never been a salesperson or passed the salesperson's exam. At hearing, Ms. Benz provided additional transcripts, and the Department now agrees that she satisfies the education requirement for licensure as a real estate broker. The other basis for the denial remains unchanged, however.

Ms. Benz presented credible evidence that her failure to follow the statutory requirements for licensure was influenced by an incorrect or at least misleading statement by an instructor at MATC. Ms. Benz testified that the instructor, Thomas Kettler, informed the class that a person could be licensed as a real estate broker after taking Principles of Real Estate and Real Estate Law and passing the broker's examination, but that the person would have to work for a broker for a year before going out on his or her own [transcript, p. 19]. This was confirmed in part by a fellow student, Harvey Harbicht, who testified that he asked Mr. Kettler at least four times what the requirements were for a broker's license, and that Mr. Kettler repeatedly told him he could obtain a broker's license if he took the two courses offered by MATC and passed the broker's exam [transcript, pp. 25-33].

Mr. Kettler appeared by phone at the hearing and testified that he did not recall addressing the specific question of the requirements for a broker's license, but he indicated that if asked he would have told the class that taking both MATC courses and passing the **salesperson's** exam would qualify a person to obtain a **salesperson's** license. However, he stated that

in that course I tried to avoid getting into the requirements for becoming licensed in the state of Wisconsin for a couple of different reasons. Number one, the course was general in nature and was -- there were many different people in that course. Some were trying to get their licenses. Some were just taking it for general interest. And we also felt that the requirements for license law in the state of Wisconsin were better covered in the real estate property law course.

[transcript, p. 39]. He also appeared less than certain of what time period was involved:

Now, this was in 1991, and the license laws were changing or had just changed at that time, as I recall. And prior to that, I believe there was a requirement for a one-year apprenticeship to become a broker. And when the license law requirements changed, it was my understanding that the apprenticeship requirement had been done away with. So, I do not -- I do not know why I would tell her that she had to work for a broker to get a broker's license at that time. I may have said that that was a past requirement. I just simply don't recall.

[transcript, p. 41].

The record in the hearing does not clearly establish when such changes occurred, but a review of the administrative rules shows that the apprenticeship requirement was still in effect at the time, and was only dropped effective February 1, 1992. The most likely interpretation

of the testimony in the hearing, considering the specific and unwavering recollection of the two students versus the non-specific recollection of the instructor, is that Mr. Kettler did misinform the class of some of the requirements for licensure, possibly because he had simply lost touch with the requirements for licensure. Since he did not consider licensure requirements to be part of the course material, he may have given an inaccurate answer without researching it.

Although this issue does not ultimately affect the outcome of this case, it was a matter of great concern for both Ms. Benz and Mr. Harbicht, and so I will note another possible explanation of the testimony. As described by Ms. Benz, the main focus of Mr. Harbicht's questions appeared to be the adequacy of the two MATC classes in fulfilling the 36-hour requirement: "he was very insistent upon having the correct number of hours because previous to that, MATC -- some MATC instructors had been leaving their students go earlier. And Harvey made it a point that we would not be let out 15 minutes earlier at night or that if any class was canceled, that we would make it up" [transcript, pp. 16-17]. It is possible that Mr. Kettler knew the difference between the requirements for licensure as a salesperson and licensure as a broker, but that he heard and focused only on Mr. Harbicht's concern, and assured him of the adequacy of the two MATC classes in fulfilling the 36-hour requirement, without hearing that Mr. Harbicht's questions were phrased in terms of a **broker's** license.

Regardless of which of the above attempts to reconcile the conflicting testimony is closer to the truth, I accept and find as a fact that Ms. Benz was given inaccurate or at least misleading information by Mr. Kettler of the requirements for licensure. Nevertheless, neither Mr. Kettler nor anyone else has the authority to alter or waive the statutory requirements for licensure as a real estate broker.

Similarly, the issue of the two examinations is moot, since the statute is unambiguous on the need to take both the salesperson's exam and the broker's exam. However, the issue was dealt with by Cletus Hansen, director of the Bureau of Direct Licensing and Real Estate, who testified that the salespersons' exam and the brokers' exam do not cover the same material, that the brokers' exam cannot be considered an expanded or more difficult version of the salespersons' exam, and that passing the brokers' exam cannot substitute for passing the salespersons' exam.

Ms Benz complained that she should not have been allowed to take the broker's exam if she was not otherwise qualified to apply for a broker's license. Although it might be possible for the Department, or for the testing company as an agent of the Department, to check the license status of individuals before allowing them to take the broker's test, it would be impossible to check the education status of those individuals prior to application being made. The bold notice in the Licensing Information Bulletin reproduced in Finding of Fact #2 above clearly shows both the separation of the testing agency from the Department and the difficulty of screening

unqualified individuals prior to application. Consequently, any attempt to prevent unqualified individuals from taking the broker's test would be largely ineffective, and the responsibility for making that determination is placed on the applicant.

Ms. Benz gave the impression of generally being a very competent person, with the only evidence to the contrary being this very proceeding, which repeatedly highlighted her reliance on her instructor's word in the face of evidence to the contrary in black and white. The following excerpts from her testimony demonstrate an almost obstinate insistence on the point.

"I checked that off, but I did not check -- I did not read that because I believed Mr. Kettler's word. Because I took his word for law."

[transcript, p. 53].

"Q: Did you note that there might be a question regarding your satisfaction of the educational requirements?

A: No, sir, I did not question it at all. I did not question -- I read it all over; but again relying on Mr. Kettler's word, I assumed that everything here, even after I read it, that I had completed the necessary requirements to take the broker's test. ..."

[transcript, p. 57]. Finally, Ms. Benz crossed out the words "the Wisconsin salesperson's exam and" in her application. This reflects well on her honesty, and it shows that when she becomes a salesperson or a broker she will scrutinize contracts carefully. However, it also shows that she managed to close her eyes to evidence "staring her in the face" that Mr. Kettler was mistaken, and she cannot lay all the blame for her mistake on her instructor. Her action thus causes me both to applaud her integrity and to question her good judgment.

As stated at the outset, Ms. Benz's application must be denied, and I make no further recommendation. However, she has already endured some frustration, and presumably some loss of income, because of her mistake. She has in fact passed one of the two required examinations, and I note that the requirement that the tests be taken in a certain order is not as clear and inflexible as is the requirement that they both be taken. Sec. 452.09(3)(d), Wis. Stats. states "The department may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination", and sec. RL 12.015(2), Wis. Admin. Code states "An applicant for examination to obtain an original real estate broker's license shall complete the education requirements specified in s. RL 25.02(1) and shall either hold a Wisconsin real estate salesperson's license or shall have passed the salesperson's examination pursuant to s. RL 12.02."

Although the sequence is implicit in both of these rules, especially the language in RL 25.02(1) which says an **applicant** for the broker's exam must have passed the salesperson's

exam, the sequence is nevertheless not as explicit as the requirement in 452.09(3)(d) that both tests be passed, and so this requirement is more open to creative interpretation. Without making it a part of my recommended order, I suggest for the Department's consideration that it could enter an order directing that Ms. Benz be granted a broker's license once she has passed both tests, without requiring her to re-take the broker's exam. All things considered, this would seem to be a formality empty of any real purpose in assuring her competence. Such an accommodation would create very little risk that others would follow her path, and it would simply be a recognition that she has already been greatly inconvenienced by her reliance (even though it reached the point of unreasonable reliance) on misleading information from her instructor.

Dated April 7, 1993.


John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

BDLS2-2805

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Department of Regulation and Licensing.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Department of Regulation and Licensing

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Department of Regulation and Licensing.

The date of mailing of this decision is April 26, 1993.